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MISCELLANY.

Has the Lawyer Lost Caste?—Extracts from an Address by T. J. O'Donnell, President of the Colorado Bar Association, to the El Paso County Bar Association at Colorado Springs, Colorado, January 20th, 1917.—At the annual meeting of the American Bar Association in Chicago, there was, running through the remarks of the speakers, a minor chord, a note of regret, based upon the assumption that the lawyer has lost rank; that he does not occupy, individually, as high a place in the community as he did of yore; that the profession, as a whole, has lost caste and is not looked up to as it once was; this thought seemed to be the inspiration for the movement to get together.

At the Philadelphia Conference, the Chairman of the Special Committee mentioned, illustrated the benefit of coöperation, by pointing out what the trades unions have accomplished, in the way of achieving prestige and power. He seemed to be of the opinion that the way for lawyers to meet the high cost of living, lay along the lines adopted by our fellow citizens in other more or less skilled and unskilled occupations.

While heartily espousing every movement for co-ordination of the forces for good, which the profession controls, and to bring about more complete coöperation between its members, I venture to disagree with the distinguished gentlemen who assume that the members of the profession, individually, have a less estate in the regard of the community than they had fifty or one hundred years ago, or more, or that the profession, as a whole, has declined in the public regard, and as for organizing a union, to bring lawyers more pay for less work. I said to the conference, that if I had to join a trades union, I would go back to some one of the honest occupations which I followed before being admitted to the bar, and would join a union of butchers, or printers, or stone-masons.

I propose to undertake to show you, tonight, that this complaint, that lawyers have been reduced in rank, is a part of the psychology, which, in every era, induces men to think some other time, not their own, the golden age.

I undertake to say, that, leaving out of consideration the element and influence of wealth, neither the members of any other profession, nor those following any other occupation, exercise an influence, in the affairs of his people, equal to that exercised by the members of the bar.

This is true not only in the nation as a whole, it is true in the individual states, and in the various communities, into which we are divided for civic and governmental purposes. If you were asked to name the most prominent, the most distinguished citizen in the United States, outside of public life, and without any reference to the

Bull Moose party or carrying a Big Stick, you would name a lawyer. You might not each and every one of you name the same lawyer, but this only demonstrates, the more securely, the soundness of my argument.

What is true in the nation, is true in the state; what is true in public life, true in private life. Somewhere there are statistics as to the number of lawyers who are and have been in the Congress and in the State Legislatures. Not wishing to depend upon statistics, I took up the directory of the Sixty-fourth Congress, to pick out the lawyers, from their biographies. One Senator, and seven out of nine members of Congress, from Alabama, are recited as being lawyers, and I find, from Who's Who, that another member, who omits to give either profession or occupation, has been admitted to the bar, and holds the degree of L. L. B.

The two Senators and seven Representatives from Arkansas are lawyers, although two of them fail to disclose the fact, in their biographies. They may have reasons of their own, for this.

California, is not so favored a state. There is a wide-open range there for the demagogue, and the agitator blooms and blossoms under its genial skies. But even California's two Senators, and five of its eleven Representatives, admit being members of the bar, while one member declares he has studied law and adds that he never asked for admission. Perhaps he thought he would be lonesome!

Colorado's two Senators, and two of her four Representatives, are lawyers. With the exception of two *smeltermen*, no man has ever been United States Senator from Colorado, for a full term, who was not a lawyer.

It is needless to go further. We would find substantially the same conditions in the delegations from the other States, and it has always been so. Members of our profession preponderate in public life. This very predominance, brings down upon us attacks from less fortunate professions and arouses the jealousy, which always accompanies consciousness of inferiority. Lawyers have been considered, in all ages, fit subjects for the jest of the wit and the jibe of the wicked; the shafts of every cynical pretender have been winged toward them. They have always been a shining mark for the sarcasm of the iconoclast, the satire of the misanthrope and the sneers of the vulgar.

We do not know when Ecclesiastes was written, but the book, of which it is a part, probably antedates all other authorities, commonly quoted in our arguments and cited in our briefs; we are accustomed to look upon that book as a very fountain of wisdom. Let me quote:

"Say not thou, What is the cause that the former days were better than these? for thou dost not enquire wisely concerning this." Ecclesiastes, 7-10.

The account, given by Saint Luke, of certain interviews between

Jesus and the lawyers, does not indicate that all of the profession were well thought of, by all of the people, even as long ago as Christ's time. In the face of that indictment, which according to the disciple, and which must be taken as true, the lawyers of that day did not deserve to be followed, as the accepted leaders of men.

A waggish follower of Jack Cade, said:

"The first thing we do, let's kill all the lawyers," and he met with a ready assent from the motley followers of that distinguished prototype of our modern reformers, as ready as could be expected from any assemblage of the rabble today. This indicates that there were people, at that time, who were not unanimously possessed of the good will towards us which is now attributed.

Ben Jonson, Robert Burton, and Charles Macklin; John Gay and Oliver Goldsmith; Junius, Colton and Percival, writers fairly representative of the two centuries before the last, each took his several fling at law and the lawyers.

This quotation from Burton's "Anatomy of Melancholy:"

"Our wrangling lawyers * * * are so litigious and busy here on earth, that I think they will plead their clients' causes hereafter,—some of them in Hell," reminds me of the dialogue between the two quarrelsome farmers over threatened litigation:

"I'll take you to the Justice Court."

"I'll meet you there."

"If you beat me in the Justice Court, I'll take you to the County Court."

"I'll meet you there."

"If you beat me in the County Court, I'll take you to the District Court."

"I'll meet you there."

"If you beat me in the District Court, I'll take you to the Supreme Court."

"I'll meet you there."

"If you beat me in the Supreme Court, I'll take you to Hell."

"Hell? Oh! My lawyer will meet you there."

Old Sam Butler's "Hudibras" (1663) devotes so many stinging lines and jingling rhymes to lawyers, that it is difficult to select the ones which best shows his poor opinion, but these will suffice:

"Your pettifoggers damn their souls,
To share with knaves and cheating fools."

A reference by David Webster too.

"The mean, money-catching abominable practises, which cover with disgrace some of the modern practitioners of law," shows that the ills which afflict our day were not unknown in his.

We have scalawags and scoundrels in the profession now, but, we had them when Warren wrote "Ten Thousand a Year," more than three-quarters of a century ago; the reputation of the profession, as

a whole, does suffer, because Quirk Gammon and Snap are still in it and Jagers still invites to crime, but, evidently, similar conditions have existed in all times and all countries, which have known lawyers as a profession.

Voltaire is reported to have said:

"I never was ruined but twice—once when I gained a lawsuit,—and once when I lost one."

It is indeed true, that, in all the times and all the countries referred to, those who jested and those who jilted, those who satirized and those who sneered, well realized that ours is the only profession which is able to safely guide the private fortune of the individual or the Ship of State.

It is not true, that either the character or standing of the profession, as a whole, has shrunk. In a time when ignorance predominated among the masses, the members of the learned professions, medicine, law and the clergy, stood out as belonging to a higher caste, and the members of these professions held, relatively, a different position in the community from that held by them now.

The general diffusion of knowledge among the people, has rendered the learning of the lawyer less singular; in an age when the higher learning is within the reach of every citizen, when every community supports a high school, when at almost every crossroads, logarithms are expounded and dead languages translated, when every State supports a University, and some, like Colorado, two or three, and every considerable community has its own College; in an age when the advancement of the arts and sciences has harnessed unknown forces to the chariot of civilization it is to be expected, it is necessary, that there shall be learned men besides lawyers and doctors and ministers, and learned professions, other than the professions so denominated one hundred years ago.

Pike's Peak, would look much higher, if it arose abruptly from this plain and stood alone. The surrounding mountains do not reduce its altitude, they only seem to.

The great prosperity, resultant upon the development of a virgin land, has produced such fruitfulness of riches that those who are the clients, now are often as well, and sometimes better educated, than the lawyer. It frequently happens, in these days, that "mere tradesmen" have university educations—something formerly reserved for the nobility, the gentry and those destined for the learned professions. Terms of money, possibly, have become more generally accepted, as the standard by which to measure the success and the ability of men, but the millionaire has eclipsed the lawyer of standing nowhere, except in the meetings of the money changers and in the salons of the merely rich. Neither in the public life to which I have referred, nor in the communal interests and activities in which men more generally participate. has the lamp of the lawyer, when

lighted by learning and integrity, been made dim by the glare of the plutocratic headlight.

There is a story of a great Irish lawyer who had a brother, less distinguished, also a member of the profession. The latter, being asked for the secret of his brother's success with juries, answered:

"Well, sor, first he butthethers them up and then he slathers them down."

I have "butthered you up" so far this evening. I think I shall now follow the case cited and "slather you down."

Lawyers have faults! Yes, much as you may be surprised to hear me say it, they have faults! When you take the profession as a mass, when you get them assembled, in public meeting for instance, they are so apt to cease to be lawyers and become mere men. So many of them have political ambitions, latent or rampant, and are cowed by the real or supposed view of the general public; so many are afraid of offending their clients; then very many of them are afraid of the judges—little judges and big judges, state judges and federal judges, and courts of all degree, from the J. P. to the S. C., there never seems to be obtainable that unity of action, on public questions, which counts so much in the scale of influence. There is, of course, a reason, creditable to our profession, why this is so. Curiously enough, the higher you climb on the intellectual ladder, the less likely you are to obtain a uniform view. Lawyers, who are accustomed to think logically and to arrive at conclusions through the reasoning faculties, who, starting from a common point, constantly reach opposite poles, by the same mental processes, cannot be expected to arrive so readily at a unanimity of view, as a body of business men, who have merely the rise and fall of prices to consider, or to follow a leader like a lot of laborers, whose class spirit is appealed to, and becomes the mainspring of their action. Notwithstanding this, I think the lawyers of the country should have taken a stand, as lawyers, on many of the agitations for radical changes in the charters of our liberties and our whole sociological structure, which have been going on for the last twenty-five years and are still in progress. It may not be expected that we should pronounce, as a profession, on votes for Women, Prohibition, Eugenics, or Birth Control, but we should have expressed clear-cut opinions for or against the Initiative, the Referendum, and the Recall, including: (a) of officials generally, (b) of judges; (c) of judicial decisions.

We did go so far as to condemn the recall of judges, but either failed to realize, or lacked courage to declare, that the same reasons, which can be urged against the recall of judges, apply, with equal force, to the recall of any other official. I should regret to believe that the psychology of mind which impelled the profession to sin-

gle out the recall of judges, was a desire, even if sub-conscious only, to exalt the judges to the public, and thereby exalt themselves to the judges. I do not think we have taken a very courageous stand, here in Colorado, over the recall of decisions; true the statute permitting it is a dead letter, so far, but it is an infernal machine, which may be wound up and set to go off, at any time, and blow up our whole social system!

Every lawyer within the sound of my voice knows that the greatest danger that confronts society today, is a lawless, licentious, and unbridled press. Right here in Colorado we have seen this avenue of public information pre-empted by confessed and convicted criminals who have increased the strength of their fortification with the loot wrested from each successive victim. The Initiative and the Referendum and the Recall have proved their choicest weapons, more effective and less dangerous than the dirk or the sandbag, or even the poisoned arrow.

We have heard them crack the whip over public officials, and have seen them drive the latter around the ring, as openly as they drive the clowns in their circus. The only difference is that the lash is applied to the back of the public official, if he does not dance to their music, while the clowns only hear the sound of the cracking and feel no sting. Even judges have worn their cap and bells, and made faces at the public for their amusement.

But how many members of the bar have ever protested, and what legal association or assemblage has ever given thought to devising, or time to discussing, a remedy? Yet we know, that just as certainly as the pendulum will swing backward as far as it has swung forward, this license of criminal-controlled press must, some day, become the excuse for the destruction of the liberty of the press, and that if we would preserve that liberty, we must restrict this license.

We confine our Initiative and our Referendum largely to matters of practice. In none of the great movements involving fundamental questions of life and liberty, which have so profoundly stirred our people, for the last three-quarters of a century, have we been originators or leaders. We were as complaisant toward slavery and slave-owners as were the clergy; we saw Dred Scott sent back to servitude because it was the law, and we made no effort to change the law, and John Brown's soul went marching on without any accelerating push from the members of the legal profession. Could you get a lawyer's convention, local, state, or national, to declare whether the white slave act should be limited to professional vice or should include occasional and accidental immoralities? Will the profession as a body, through its official organizations, take a stand against the subversion of fundamental liberties which will inevitably

result from proposed engraftments on present sumptuary legislation? Will it fearlessly proclaim that toleration of ex post facto laws on one subject, will certainly lead up to the enactment, and upholding, of the same kind of laws on other subjects? Will it boldly point out that the weakening of the guarantees against search and seizure tends to undermine one of the most sacred foundations upon which free government is builded and sets a precedent for future tyrants to use against human liberty? I regret, to say that when it comes to questions of this kind we are moral cowards, whether on or off the bench.

The aspiration for a higher place, in public confidence and public esteem, must be turned into an aspiration to accomplish greater public good and render greater public service, whether what we wish for is something to be gained or regained, the accomplishment must depend on courage. Shall we lag or lead? Shall we point out the dangers as they are disclosed and apply the remedies as they are called for, or shall we devote our attention to fee-taking and the forms of writs? Shall we be guardians of the temple of Liberty, protecting it from all insidious hostile approaches, or shall we be mere alms-seekers upon the steps?—Chicago Legal News.